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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/550,551	03/23/2006	Alain Behar	Q90507	1903
23373 7590 02/19/2009 SUGHRUE MION, PLLC 2100 PENNSYLVANIA AVENUE, N.W. SUITE 800 WASHINGTON, DC 20037				
EXAMINER NICHOLS IL ROBERT K				
ART UNIT		PAPER NUMBER		
3754				
MAIL DATE		DELIVERY MODE		
02/19/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/550,551

**Applicant(s)**

BEHAR ET AL.

**Examiner**

ROBERT K. NICHOLS II

**Art Unit**

3754

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 18 November 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 November 2008 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-8508)
- Paper No(s)/Mail Date 09/28/2005
- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Amendment***

This office action is responsive to the amendment filed 11/18/2008 . As directed by the amendment: claims 1 and 8 have been amended, no claims have been cancelled, and new claims 13-15 have been added. Thus, claims 1-15 are presently pending in this application.

Furthermore, the amendments to the specification and amended replacement drawings filed on 11/18/2008 are accepted by the Examiner

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

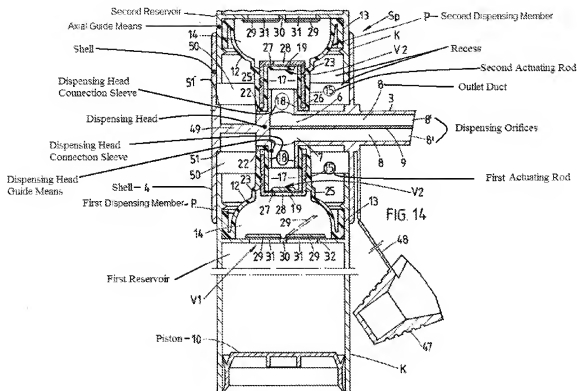
(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 1-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schuckmann (DE 93 02 196) in view of Ganzeboom (US 2005/0006409).**

Regarding claims 1, 2 and 13, Schuckmann discloses a dispenser including a first fluid dispenser member associated with a first fluid reservoir, wherein the first member includes a first actuating rod mounted to move along the rod axis between a rest position and an actuated position. Schuckmann further discloses a second fluid dispenser member associated with a second fluid reservoir, wherein the second

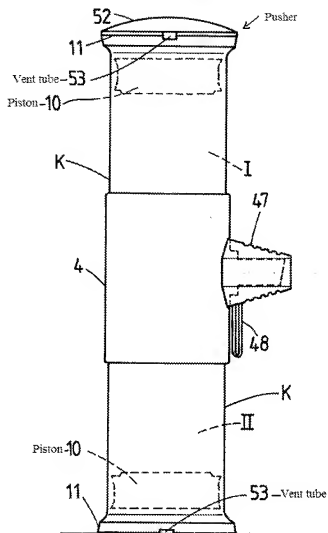
Art Unit: 3754

member includes a second actuating rod mounted to move along a second rod axis between a rest position and an actuated position. Schuckmann additionally discloses that the first and second rod axes coincide (see marked-up figures 11 and 14).



**Marked-up Figure 14**

Schuckmann further discloses the first rod having a free end pointing in a first direction and a second rod having a second free end pointing in a second direction, the two members being disposed one relative to the other with the first and second rod axes extending parallel and with the first direction being opposite to the second direction, so that one dispenser member is disposed upside down relative to the other dispensing member (see marked-up figures 11 and 14).



**Marked-up Figure 11**

Furthermore, Schuckmann discloses the reservoirs to be airless reservoirs with their volumes decreasing as fluid is extracted therefrom. In addition, Schuckmann discloses one of the dispenser members has an internal return spring 12 that urges the actuating rod towards its rest position (see marked-up figure 14 and page 1 of translation).

Regarding claim 3, Schuckmann discloses a pusher mounted to move along a push axis extending parallel to the rod axes, wherein the pusher subjected to a push force urges one rod free end towards the other rod free end (see marked-up figure 11).

Regarding claim 4, Schuckmann discloses the pusher acts on the first reservoir to move it towards the other reservoir, the actuating rods of the two dispenser members remaining static relative to each other while moving together towards the reservoirs (see marked-up figures 11, 14 and figure 15).

Regarding claim 5, Schuckmann discloses the pusher forms a recess for receiving a fluid reservoir (see marked-up figure 14).

Regarding claims 6 and 7, Schuckmann discloses the pusher being provided with axial guide means for axially moving the second reservoir that it drives. Schuckmann further discloses the reservoirs being received in a shell 4, a dispenser head that is common to both of the dispenser members being mounted to slide axially in the shell 4, wherein the pusher is mounted to slide axially in the shell 4 (see marked-up figure 14).

Regarding claim 8, Schuckmann discloses the dispensing head being provided with outlet ducts opening out at a dispensing orifice opening, the head having two connection sleeves communicating with the duct outlet and each receiving a respective

free end of the respective actuating rods, the two sleeves being constrained to move with each other (see marked-up figure 14).

Regarding claim 9, Schuckmann discloses the dispensing head forms guide means for dispensing (see marked up figure 14).

Regarding claim 10, Schuckmann discloses one dispenser member situated above its reservoir and the other dispensing member is situated below its reservoir. Schuckmann further discloses the dispenser member situated below the reservoir being provided with a vent tube 53 that extends inside the reservoir out of the fluid (see marked-up figures 11, 14 and page 7 of translation).

Regarding claim 11, Schuckmann further discloses the dispensing members to be pumps (see page 4 of translation).

Regarding claim 12, Schuckmann discloses at least one of the reservoirs is chosen from the group formed of follower piston reservoirs and of variable-volume flexible pouches (see marked-up figure 14).

With further regards to claims 1 and 13, and with respect to claims 14 and 15, Schuckmann discloses all the elements of the claimed invention except a load adjustment spring.

Ganzeboom teaches a fluid dispenser including a fluid dispensing member 5 associated with reservoir including an actuation rod 6 mounted to move along a first rod axis between a rest position and an actuated position. Ganzeboom further discloses the dispenser having an internal return spring 19 that urges the actuating rod towards its rest position. Ganzeboom additionally discloses the use of a load adjustment spring 46 disposed outside the dispenser member supported between the pump and dispensing head in order to bias the two members, returning the actuation rod to the leakage free initial position (see figures 2 and 10, and paragraphs 70 and 71).

Thus, one of ordinary skill in the art would recognize that the known technique of providing an adjustment spring disposed outside the dispensing member supported between the pump and dispensing head, involves only routine skill in the art, for the predictable result of biasing, returning the actuation rod to the leakage free initial position.

### ***Response to Arguments***

Applicant's arguments submitted under "Remarks" in the response filed on 11/18/2008 have been fully considered but are moot in view of the new rejections made in this action.



***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Ciavarella et al. (US 2004/0232168) and Ophardt (US 2005/0263545) show other load adjustment springs.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **ROBERT K. NICHOLS II** whose telephone number is (571)270-5312. The examiner can normally be reached on Mon-Friday 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on 571-272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/R. K. N./  
Examiner, Art Unit 3754

/Kevin P. Shaver/  
Supervisory Patent Examiner, Art  
Unit 3754